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present in the case which, in the opinion of the applicant, justified the granting of his application.

(c) *Disposition of application.* The application, if filed with the answer, shall be disposed of as provided in § 1280.13. In any other case the application shall be considered and decided by the district director or the Associate Commissioner for Examinations, or the Director for the National Fines Office from whose decision an appeal may be taken to the Board within 15 days after the mailing of the notification of decision as provided in part 3 of this chapter.

[22 FR 9808, Dec. 6, 1957, as amended at 23 FR 9124, Nov. 26, 1958; 46 FR 28624, May 28, 1981; 54 FR 18649, May 2, 1989]

§ 1280.52 Payment of fines.

(a) All fines assessed pursuant to sections 231(d); 237(b); 239; 251(d); 254(a); 255; 256; 271(a); 272, 273 and 274(c) of the Act shall be made payable to and collected by the Service.

(b) All fines collected pursuant to sections 271(a) and 273 of the Act shall be deposited in the Immigration User Fee Account established in accordance with the provisions of section 286 of the Act.

(c) From the amounts collected under paragraphs (a) and (b) of this section, the increase in penalties collected resulting from the amendments made by sections 203(b), 543(a), and 544 of the Immigration Act of 1990, shall be credited to the appropriation for activities authorized under section 280(b) of the Act.

[56 FR 26020, June 6, 1991]

§ 1280.53 Civil monetary penalties inflation adjustment.

(a) *In general.* In accordance with the requirements of the Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. 101-410, 104 Stat. 890, as amended by the Debt Collection Improvement Act of 1996, Pub. L. 104-34, 110 Stat. 1321, the civil monetary penalties provided by law within the jurisdiction of the Service and listed in paragraph (c) of this section are adjusted as set forth in this section, effective for violations occurring on or after September 29, 1999.

(b) *Calculation of adjustment.* (1) The inflation adjustments described in paragraph (c) of this section were determined by increasing the maximum civil monetary penalty or the range of minimum and maximum civil monetary penalties, as applicable, for each civil monetary penalty assessed or enforced by the Service by the cost-of-living adjustment as that term is defined by the Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. 101-410. Any increase so determined was rounded to the nearest—

(i) Multiples of \$10 in the case of penalties less than or equal to \$100;

(ii) Multiples of \$100 in the case of penalties greater than \$100 but less than or equal to \$1,000;

(iii) Multiples of \$1,000 in the case of penalties greater than \$1,000 but less than or equal to \$10,000;

(iv) Multiples of \$5,000 in the case of penalties greater than \$10,000 but less than or equal to \$100,000;

(v) Multiples of \$10,000 in the case of penalties greater than \$100,000 but less than or equal to \$200,000; and

(vi) Multiples of \$25,000 in the case of penalties greater than \$200,000.

(2) Notwithstanding the provisions of paragraph (b)(1) of this section, the initial adjustment for each penalty is capped at 10%.

(c) *Adjustment to penalties.* The civil monetary penalties provided by law within the jurisdiction of the Service, as set forth in this paragraph (c)(1) through (9), are adjusted in accordance with the inflation adjustment procedures prescribed in section 5 of the Federal Civil Monetary Penalties Inflation Adjustment Act of 1990, Pub. L. 101-410, effective on or after the September 29, 1999 as follows:

(1) Section 231(d) of the Act, Lists of Aliens and Citizen Passengers Arriving or Departing; Record of Resident Aliens and Citizens Leaving Permanently for Foreign Country: from \$300 to \$330.

(2) Section 234 of the Act, Designation of Ports of Entry for Aliens Arriving by Civil Aircraft: from \$2,000 to \$2,200.

(3) Section 251(d) of the Act, List of Alien Crewmen; Reports of Illegal Landings: from \$200 to \$220 for each alien not reported in accordance with

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§ 251; and from \$5,000 to \$5,500 for use of alien crewman for longshore work in violation of section 251(d).

(4) Section 254(a) of the Act, Control of Alien Crewman: from \$500 minimum/\$3,000 maximum to \$550 minimum/\$3,300 maximum.

(5) Section 255 of the Act, Employment on Passenger Vessels of Aliens Afflicted with Certain Disabilities: from \$1,000 to \$1,100.

(6) Section 256 of the Act, Discharge of Alien Crewman: from \$1,500 minimum/\$3,000 maximum to \$1,500 minimum/\$3,300 maximum.

(7) Section 257 of the Act, Bringing Alien Crewmen Into United States with Intent to Evade Immigration Laws: from a \$10,000 maximum to a \$11,000 maximum.

(8) Section 271(a) of the Act, Prevention of Unauthorized Landing of Aliens: from \$3,000 to \$3,300.

(9) Section 272(a) of the Act, Bringing in Aliens Subject to Exclusion on a Health-Related Ground: from \$3,000 to \$3,300.

(10) Section 273(b) of the Act, Unlawful Bringing of Aliens Into United States: from \$3,000 to \$3,300.

(d) *Identification of sections requiring no adjustment to penalties.* The civil monetary penalties provided by law within the jurisdiction of the Service, as set forth below in paragraphs (d)(1) through (7) of this section require no adjustment:

(1) Section 240B(d) of the Act, Voluntary Departure.

(2) Section 243(c)(1)(A) and (B) of the Act, Penalties Related to Removal.

(3) Section 274C(a)(5) and (a)(6) of the Act, Penalties for Document Fraud.

(4) Section 274D of the Act, Penalties for Failure to Depart.

(5) Section 275(b) of the Act, Entry of Alien at Improper Time or Place.

[64 FR 47102, Aug. 30, 1999]

PART 1287—FIELD OFFICERS; POWERS AND DUTIES

Sec.

1287.4 Subpoena.

1287.6 Proof of official records.

AUTHORITY: 8 U.S.C. 1103, 1182, 1225, 1226, 1251, 1252, 1357.

SOURCE: Duplicated from part 287 at 68 FR 9845, Feb. 28, 2003.

EDITORIAL NOTE: Nomenclature changes to part 1287 appear at 68 FR 9846, Feb. 28, 2003.

§ 1287.4 Subpoena.

(a) *Who may issue—(1) Criminal or civil investigations.* For provisions relating to the authority of immigration officers to issue a subpoena requiring the production of records and evidence for use in criminal or civil investigations, see 8 CFR 287.4(a)(1).

(2) *Proceedings other than naturalization proceedings—(i) Prior to commencement of proceedings.* For provisions relating to who may issue a subpoena requiring the attendance of witnesses or the production of documentary evidence, or both, for use in any proceeding under this title, other than under 8 CFR part 335, or any application made ancillary to the proceeding, see 8 CFR 287.4(a)(2)(i).

(ii) *Subsequent to commencement of any proceeding.* (A) In any proceeding under this chapter and in any proceeding ancillary thereto, an immigration judge having jurisdiction over the matter may, upon his/her own volition or upon application of government counsel, the alien, or other party affected, issue subpoenas requiring the attendance of witnesses or for the production of books, papers and other documentary evidence, or both.

(B) *Application for subpoena.* A party applying for a subpoena shall be required, as a condition precedent to its issuance, to state in writing or at the proceeding, what he/she expects to prove by such witnesses or documentary evidence, and to show affirmatively that he/she has made diligent effort, without success, to produce the same.

(C) *Issuance of subpoena.* Upon being satisfied that a witness will not appear and testify or produce documentary evidence and that the witness' evidence is essential, the immigration judge shall issue a subpoena.

(D) *Appearance of witness.* If the witness is at a distance of more than 100 miles from the place of the proceeding, the subpoena shall provide for the witnesses' appearance at the Service office nearest to the witness to respond to oral or written interrogatories, unless